

STATE MINIMUM WAGE LAWS IN THE PACIFIC NORTHWEST AND THEIR EFFECT ON UNEMPLOYMENT

by

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I. Introduction

The Fair Labor Standards Act of 1938 (“FLSA”)¹ established a uniform requirement that covered workers be paid a base amount per hour throughout the nation.² It was designed to exclude from interstate commerce goods produced “under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being” and to prevent the distribution of goods in interstate commerce, the production of which would perpetuate substandard labor conditions.³ The codification of such a requirement sparked, and continues to spark, an impassioned economic and political debate.⁴ The statute’s legislative history suggests it was enacted to improve the plight of the working poor.⁵ While proponents and critics may agree on such a laudable end, they argue vehemently about the about efficacy of the chosen means.⁶ Not only are the intended consequences of the Act debated, but the alleged unintended consequences are controversial as well.⁷

This paper reviews the history of federal minimum wage legislation, along with the controversy that persists concerning its economic and social justifications. It also explores state laws which mandate a higher minimum wage rate than the federal requirement, presumably to further those same goals. It then discusses research conducted on the effect that the minimum wage rate has on employment, and reports the results of a study completed by the authors which compares the unemployment rates in contiguous counties with different minimum wage rates in the Northwest. The analysis of the data reveals that, from an economic perspective, there is a strong correlation between a higher legislated minimum wage rate and a higher unemployment rate. The results of this study suggest that, because of this disemployment effect, minimum wage laws indeed may frustrate the goals advanced as their justification, and that alternative forms of aid to workers, who are at (or below) the poverty line, should be explored.

II. Federal and State Minimum Wage Legislation

A. Early Minimum Wage Laws and their Constitutional Challenges⁸

Early state legislation was justified as a means of addressing the persistence of sweatshops, or places of employment in which workers, who were not the primary source of income for the household (women and children), were paid wages below what was necessary to sustain themselves on their own, that is, a *living wage*.⁹ Massachusetts was the first state to pass minimum wage legislation in 1912.¹⁰ Several states followed its lead, such as Washington and Oregon in 1913, and Arizona and Arkansas in 1925 and 1927.¹¹ Cumulatively, between 1912 and 1938 twenty-eight states, as well as Puerto Rico and the District of Columbia passed minimum wage legislation which was largely aimed at women and children.¹² Congressional hearings before House and Senate committees were held in 1918 and 1919 to explore the establishment of a minimum wage for federal employees, as well.¹³

While fairly widespread across the nation, initial state attempts at wage regulation failed to survive constitutional challenges.¹⁴ In *Hammer v. Dagenhart* a majority of the Court held that Congress was without power to exclude the products of child labor from interstate commerce.¹⁵ The Supreme Court also struck down a District of Columbia law that set minimum wages for women in *Adkins v. Children's Hospital*, holding that the act was an unconstitutional interference with the freedom to contract and repugnant to the Due Process Clause of the Fifth Amendment, since the amount specified bore no relation to the type of work involved or employee capability, and unjustly prevented bargaining for contractual terms.¹⁶ Similarly, a New York statute, which, unlike the D.C. statute, required that the wage be commensurate with the value of services rendered, was ruled unconstitutional in *Morehead v. New York ex rel. Tipaldo*, because under the Court’s interpretation of the Fourteenth Amendment Due Process Clause, states also were without power to change or nullify contracts between employers and adult women workers as to wages paid.¹⁷

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Ultimately, in reviewing the state of Washington's *Minimum Wages for Women Act*, the Court changed course completely, and upheld the state statute against a Fourteenth Amendment challenge, concluding that the legislation was a valid exercise of the state's police power to protect the health and safety of women.¹⁸ This ruling paved the way in part for the passage of the Fair Labor Standards Act of 1938.¹⁹ A part of the *New Deal* package,²⁰ the FLSA was passed on the heels of the Great Depression, with its high unemployment levels and the prevalence of people living in poverty.²¹ The FLSA was intended to protect blue-collar workers and to allow them to maintain a basic standard of living.²²

While many of President Roosevelt's New Deal reforms were stymied by decisions of the Supreme Court ruling the legislation unconstitutional,²³ the case of *NLRB v. Jones & Laughlin Steel* reversed this trend, and expanded Congressional power under the Interstate Commerce Clause because of the profound effect that intrastate activities could have on interstate commerce.²⁴ When the validity of the FLSA was tested in *United States v. Darby*,²⁵ the Court upheld the Act as being constitutional, and as not offending states' rights under the Tenth Amendment, concluding that Congress had the power under its control of interstate activities to choose the means reasonably suited to reach its goals.²⁶ The Court observed that the requisite evil Congress sought to redress was the use of the facilities of interstate commerce to spread goods produced by the maintenance of substandard labor conditions, which in effect was a method of unfair competition.²⁷

B. The Federal Labor Standards Act

Indeed, the Federal Labor Standards Act of 1938 was premised upon a Congressional finding that "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers" was perpetuated by the channels and instrumentalities of interstate commerce, burdened the free flow of goods in commerce, constituted an unfair method of competition, led to labor disputes and an interference with the orderly and fair marketing of goods.²⁸ As passed, and then amended in subsequent sessions of Congress, the Act requires covered employers to pay non-exempt employees a specified rate.²⁹ Some of the categories of employment exempt from the legislation include, for example, certain employees in the agricultural sector and fishing industry,³⁰ as well as workers "employed in a bona fide executive, administrative, or professional capacity,"³¹ as defined by regulations promulgated by the Department of Labor.³² The exact boundaries of the statutory exemptions, of course, are subject to judicial interpretation.³³ The law also created the Wage and Hour Division in Department of Labor to administer the provisions of the law, collect relevant data, and report annually to Congress.³⁴

Congress has amended the FLSA numerous times. In 1960s, Congress shifted the focus of the Act from the employees' activities to the nature of the employers' enterprise, by extending the Act's provisions to employees of enterprises engaged in commerce or the production of goods for commerce.³⁵ Amendments to the FLSA have not only increased its rate,³⁶ but its coverage of employees, as well.³⁷ For example, the 1974 amendments extended coverage to state and federal workers,³⁸ as well as to documented household workers.³⁹ The 1996 legislation established a lower youth minimum wage for workers under the age of twenty to be paid during the first ninety consecutive days of their employment.⁴⁰ More recently, Congress passed the Fair Minimum Wage Act of 2007, which in three annual seventy-cent increments, increased the threshold wage from \$5.15/hour to \$7.25/hour.⁴¹ Although Congress increased the nominal rate of the minimum wage over the past sixty years from twenty-five cents to its current level of \$7.25, allegedly the real value of the wage in the last forty years has fluctuated and ultimately suffered a substantial decline.⁴²

Do the minimum wage provisions of the FLSA affect a substantial number of American workers? According to estimates for 2008, of the 75.3 million American workers age sixteen and over who were paid at hourly rates (58.2 percent of all wage and salary workers), about 2.2 million workers (three percent) were paid wages at or below the minimum.⁴³ While the number of workers covered is substantial, the estimate may seem less than expected in part because some states have established higher rates, a departure that is permissible.

C. State Minimum Wage Legislation

The FLSA does not preclude states from providing for a higher minimum wage rate.⁴⁴ Minimum wage rates that exceed those of the federal rate currently exist in fourteen states and the District of Columbia.⁴⁵ Some state statutes establish a specific minimum wage rate that is higher than the federal wage rate.⁴⁶ Other states link the state minimum wage to the federal minimum wage.⁴⁷ A few states have adopted the indexing approach suggested by some policy analysts,⁴⁸ and adjust their minimum wage rate according to the Consumer Price Index.⁴⁹ Several states have not enacted minimum wage legislation at all.⁵⁰ Interestingly, South Carolina and Louisiana both specifically prohibit governmental subdivisions within their respective states from enacting minimum wage rates.⁵¹

III. Wage Regulation as a Tool to Combat Unemployment and Poverty

The routine conflict that ignites controversy over state and federal minimum wage legislation concerns whether or not a hike in the minimum wage rate, or even the existence of a legislated minimum wage requirement, causes unemployment.⁵² Other points of contention about sound economic and social policy also swirl around the minimum wage debate, such as whether or not the policy is a well-targeted one aimed at assisting low-income working individuals and families.⁵³

A. Arguments in Favor of Minimum Wage Legislation

Proponents contend that the moderately increasing the minimum wage does not adversely affect employment rates,⁵⁴ and that the elasticity in the labor marketplace is sufficient to absorb minimum wage increases.⁵⁵ One economic model suggests that marginal workers are squeezed out of the market as high-rent workers ratchet up effort level, which increases the value of marginal product and reduces the size of the employment effect.⁵⁶ Another economist observes that raising the minimum wage to catch up with persistent inflation cannot possibly lower anyone's profit or destroy jobs.⁵⁷ In fact, an increase can raise employment because a shrinking real minimum wage (as adjusted for inflation) also shrinks aggregate demand as well as demand growth, particularly since it reasonably may be assumed that minimum wage workers consume everything they earn, so that when their real earnings decrease, there is some loss in aggregate demand.⁵⁸ That decline in demand tends to lower output and employment, whereas the fall in demand growth lowers output growth and raises the rate of unemployment.⁵⁹ Moreover, studies have found that increasing the minimum wage neither hindered the growth of small business nor precipitated business failures.⁶⁰

Recognizing how inflation can erode the real value of a working wage and desiring to insure that the lowest paid workers will have some semblance of financial stability, some minimum wage supporters propose the adoption of a system that automatically adjusts the rate as the cost of living increases by indexing it to a measure such as the Consumer Price Index.⁶¹ In fact, the indexation of the federal minimum wage to some type of cost of living measure was debated in the 1970s and early 1980s as well as in the 1990s, under both Democratic and Republican administrations.⁶² Policy arguments in favor of indexing the minimum wage to some formula, which might be based on cost of living adjustments, a percentage of average hourly earnings, or the Consumer Price Index, counsel that, for both employees and employers, increases would be regular, predictable, and tied to a neutral standard, instead of the political climate in Congress.⁶³

Although seemingly self-evident, the primary problem of low-wage workers is low wages, along with the absence of benefits.⁶⁴ While governmental income support programs exist, such support programs are not administered in a coordinated fashion, require a cumbersome application process, and remain insufficiently publicized and stigmatized.⁶⁵ Recently, a *living wage* movement, solidified by the involvement of community and labor groups, has emerged at the local level, which champions a variety of employment empowerment issues beyond the minimum wage rate, including performance-based discharge, seniority and benefits, in addition to economic inequality.⁶⁶ In other words, while the minimum wage rate is a necessary condition, it is no longer sufficient for economic sustainability.⁶⁷ The living wage movement, however, is not just defined by its economic impact goals for employment and poverty, but also on the goal of expanding participation in society, both politically and productively.⁶⁸ A recent study of the Los Angeles Living Wage Ordinance, ascertained that it had increased pay in nearly ten thousand jobs, primarily affecting low-income workers, with minimal employment reductions.⁶⁹

B. Arguments Against Minimum Wage Legislation

Nevertheless, concerns persist about the effectiveness, as well as the unintended consequences of the FLSA's minimum wage provision.⁷⁰ For example, it is argued that the economic brunt of the legislation is borne, not by society as a whole as a means of insuring a living wage for workers, but instead by small business owners who employ unskilled labor.⁷¹ Some critics assert that the workplace has changed dramatically since 1938, and that those demographic shifts are not adequately addressed by the FLSA.⁷² Predominately, the literature since the early 1990s on the employment effects of minimum wages 1) points to a reduction in employment opportunities for low-skilled and directly affected workers, 2) reports virtually no evidence that minimum wages reduce the proportion of families with incomes near or below the poverty line and may adversely affect low-income families, and 3) suggests that minimum wages appear to inhibit skill acquisition by reducing educational attainment and perhaps training, resulting in lower adult wages and earnings.⁷³

Advocates of New Progressivism question whether or not the minimum wage requirement is capable of providing adequate financial support to aid in the fight against poverty and homelessness, or if instead tax credits and housing subsidies are better suited to achieve those economic and social goals.⁷⁴ Commentators question how the minimum wage can be effective in promoting economic independence since the majority of minimum wage earners are no longer the primary wage earners in a household.⁷⁵ Further, since there is a disconnection between the population purportedly targeted by minimum wage legislation and its actual benefactors, who often have other sources of income, they question if the redistributive goals of minimum wage legislation are achieved by such poorly a targeted assistance program.⁷⁶ A comprehensive study of the economic effects of the Earned Income Tax Credit ("EITC") program declared that "whatever the minimum wage can do, the EITC can do more efficiently, with fewer negative consequences, and with better target efficiency."⁷⁷

Other observations based upon studies offer additional criticisms. One study suggests that the minimum wage does not help in the war against poverty but merely serves to redistribute income among low income families rather than to them.⁷⁸ Another study documents that an increase in welfare caseloads accompanied a minimum wage hike, suggesting that minimum wage policies are not effective in securing financial independence for low income workers.⁷⁹ Yet another data analysis suggests that, since women still are overly represented in minimum wage jobs, policies that focus on equity adjustments for comparable worth are more effective at targeting poverty than the minimum wage rates.⁸⁰

Aside from concerns about its effectiveness in advancing the economic status of wage-earners, is the concern that the minimum wage rates, along with increases in its legislated amount, adversely affect employment.⁸¹ Critics contend that the data provide that an artificial increase in the price of labor necessarily causes less of it to be bought, a predictable outcome in the law of supply and demand.⁸² Similarly, if a minimum wage rate exceeds the contribution of some employees to the firm's revenue, the firm can either terminate some employees or subsidize their employment, and if they are subsidized, then the firm likely will forego hiring some persons it otherwise would have hired, and aggregate employment, thus, will be reduced.⁸³ Further, economists note that evidence of negative employment effects is sufficiently strong, and caution that raising the minimum wage rate is likely to harm the availability and characteristics of jobs for those workers whose wages are likely to be most impacted.⁸⁴ Finally, the increase in labor costs can spur inflation and undercut the real minimum wage, precipitating an endless spiral.⁸⁵

In addition to any economic analysis of adverse impact, labor supporters cite several seemingly inherent operational problems minimum wage legislation: 1) the Wage and Hour Division of the Department of Labor is underfunded and understaffed, resulting in less than effective enforcement activities, 2) employers are subverting the system by allegedly hiring independent contractors or subcontractors to escape the provisions of the FLSA, and 3) employees, most of whom are at-will, are reluctant to complain to authorities anyway for fear of retaliation.⁸⁶ Clearly, controversy surrounds choosing the most appropriate means of addressing the same issues that exist today as existed in 1938, the maintenance of a sufficient standard of living for citizens and the elimination of unfair competition among employers.⁸⁷ Although inconsistent results complicate this issue, empirical studies provide some clues as to the best means of identifying and addressing both the intended and unintended consequences of government regulatory policy in the labor market.

IV. Comparative Analysis of Economic Effects

A. *Studies Analyzing the Effects of Minimum Wage Legislation*

In the 1980s a number of states responded to the ten-year freeze of the federal minimum wage rate by increasing their state rates.⁸⁸ As a result, economists, like medical researchers, had a laboratory for comparing labor market outcomes in *treatment and control* groups by measuring the effect of minimum wage increase for one group of workers and not another.⁸⁹ Such research may be categorized into two methodological approaches: (1) traditional national-level studies and (2) localized adjoining areas case studies.⁹⁰ The latter most commonly includes a comparison of contiguous regions, either by state, county, or city limits, in which one contiguous region has a minimum wage change (usually a rise in minimum wage) and the other contiguous region(s) have no minimum wage change, acting as a control.⁹¹ Regional analysis is important because the perceived impact federal minimum wage legislation on labor conditions should not necessarily be generalized because differences in the cost of living and amenities among regions may lead to differences in the real minimum wage level.⁹²

Some case studies instead focus upon specific industries,⁹³ although some economists question this approach.⁹⁴ For example, in 2007, the fast-food and table service industries in San Francisco were compared with contiguous counties not regulated by the San Francisco municipal minimum wage and found no increased rate of business closure or employment loss within the San Francisco restaurants.⁹⁵ The research also concluded that in fast food restaurants, prices, along with the employment of full-time workers and employee job tenure, increased significantly, while the same effect was not discernable at table-service restaurants, suggesting that the San Francisco minimum wage had a positive effect upon job quality and worker attachment, with no commensurate reduction in the overall separation rate.⁹⁶ Other studies focus on a specific group of employees in a local market, such as teenagers.⁹⁷

B. *A Study of Contiguous Counties with Different Rates in the Pacific Northwest*

The study described in this paper captures effects in contiguous regions in the Pacific Northwest, a somewhat isolated region of the country, in which one area is subject to a series of minimum wage increases (Washington), while a neighboring area's minimum wage remains the same for a decade, from 1997 through 2006 (Idaho). The study examines changes in the unemployment rate in all of the Idaho and Washington counties along the states' shared border.

Table 1 was created with data gathered from the Bureau of Labor Statistics Local Area Unemployment data base on state level employment, and shows the statewide minimum wage and unemployment figures for Washington and Idaho.⁹⁸ The nine year period from 1998 to 2006 is of special interest, because in 1998 both states in the study had the same minimum

wage rate, that is, the federal rate of \$5.15 per hour. However, Idaho's minimum wage rate remained unchanged until 2007, while Washington's rate was gradually increased every year beginning in 1999. In 2006, the minimum wage in Washington was \$7.63, or forty-eight percent higher than that of Idaho at \$5.15.

Figure 1 combines and plots statewide trend lines for both minimum wage and unemployment rates based upon the data represented in Table 1. In 1998, the starting point of this study, both states had similar unemployment rates near five percent, and identical minimum wage rates. As the Washington minimum wage rate increased, its unemployment rate increased gradually relative to that of Idaho. For example, by 2003, Washington's unemployment rate had risen to 7.4 percent and Idaho's unemployment rate was 5.2 percent. In August 2007, Idaho's minimum wage rate increased because of a change in the federal rate, and in 2008 the gap between the unemployment rates of Washington and Idaho began to close. Thus, a cursory examination of statewide minimum wage and unemployment rates provide supporting evidence for the claim that higher minimum wage rates tend to increase unemployment.

The study next focused on the border areas of Washington and Idaho. It is along the border that the effects of a minimum wage rate change, if any, are most likely to be observed. Labor mobility is likely to be highest between the two states along their shared border; furthermore, examining employment in adjacent areas helps reduce ethnic, social, and geographical variation between the states' workforces.⁹⁹ There are six Idaho counties that border Washington, and four Washington counties that border Idaho. Along the shared border there are two metropolitan areas, Spokane in Spokane County, Washington and Coeur d'Alene in Kootenai County, Idaho. Spokane County is by far the largest source of workers in the region, with a labor force of approximately 240,000, and Kootenai is about a third of Spokane's size.¹⁰⁰ The remaining counties, Pend-Orielle, Whitman, and Asotin in Washington, and Benewah, Bonner, Boundary, Latah, and Nez Perce in Idaho, each only contribute a small portion of the overall labor force.¹⁰¹

For the study, the authors gathered labor force and employment data from the Bureau of Labor Statistics Local Area Unemployment database for these ten counties. Rather than focus on specific subgroups, such as teenagers, or within industries, such as the restaurant industry, this study examines the entire labor force among contiguous counties to see if the employment trends that correspond to minimum wage changes are observable at the macroeconomic level. To calculate border unemployment rates in each state, the authors aggregated figures on the labor force and the numbers of unemployed workers from each of these counties, and used the calculated unemployment rates to create Table 2 and Figure 2.¹⁰² The overall labor force and unemployment numbers can be found in Table 2. Figure 2 is similar to Figure 1, except that it displays trends only in the border regions of both Washington and Idaho.

When compared to statewide trends, an examination of the data from these contiguous counties reveals a more profound connection between minimum wage hikes and unemployment. In the border region, Washington and Idaho did not begin with similar unemployment rates in 1998. Idaho's border counties had an aggregate unemployment rate of 6.8 percent, while Washington's border counties had a much lower rate of four percent. As the minimum wage rate increased in Washington, the border region's unemployment rate gradually rose, reaching a local peak in 2003.¹⁰³ While Washington's minimum wage rate consistently increased beginning in 1999, Idaho's rate steadily decreased in the border region. The unemployment rate on the Idaho side of the border reached a low of 3.4 percent in 2007, after which it began to increase again. As previously noted, it was in August of 2007 that the higher federal minimum wage became effective in Idaho.

The corresponding trends between minimum wage rate changes and unemployment rates on both sides of Washington-Idaho border are large and readily observable. In 1998, when both states still had the same minimum wage rate, the border unemployment rate in Washington was forty percent lower than the border unemployment rate in Idaho.¹⁰⁴ By 2006, Washington's minimum wage rate was forty-eight percent *higher* than that of Idaho and the unemployment rate of Washington's border counties was thirty-eight percent *higher* than that of the Idaho counties.¹⁰⁵ The comparison between contiguous counties only strengthens the impact of that observation. Net unemployment in the Washington border counties increased by over twenty-two percent between 1998 and 2006; over the same period, net unemployment in Idaho border counties *fell* by forty-eight percent.¹⁰⁶ These trends strongly suggest that when a minimum wage rate increase is large enough, higher unemployment rates will follow, especially when compared to unemployment trends in contiguous counties without any minimum wage increase.

This study is distinguishable from the existing literature comparing unemployment and minimum wage rates in three key respects. First, the study compares the minimum wage rate's employment effects in contiguous counties in two states, which, while an established research technique for examining such effects, is still relatively rare among research studies.¹⁰⁷ Second, prior to the 2007 increase in the federal minimum wage rate, the difference between the minimum wage rates of Washington and Idaho represented the largest gap between any two states that would permit a comparison of geographically contiguous counties. Compared with prior research on New Jersey and Pennsylvania, which examined the effect of an eighteen percent (eighty-cent) increase in New Jersey's minimum wage rate,¹⁰⁸ the comparison in this study is focused on a significantly larger difference in minimum wage rates, both in absolute and percentage terms. Third, this study looks at a consistent increase in one state's minimum wage rate over several years, while the other state's wage rate remains unchanged.¹⁰⁹ The consistent increase over time helps to ensure that other factors, such as economic growth, will not prevent modest minimum wage increases from *binding*, that is, from being higher than the prevailing market wages in the relevant region or industry.¹¹⁰ With few exceptions, previous studies have only examined the effects of either one-time increases, or a limited number of increases, in a state's minimum wage rate.¹¹¹

One reason why the trends in this study may appear so much stronger than in previous studies of contiguous counties is the magnitude of the difference. Both in absolute terms (\$2.48) and as a percentage of the federal minimum wage (forty-eight percent), the difference between the effective minimum wage rates of Washington and Idaho is anomalous. No prior study has examined such a large difference. The implication is that only unusually large minimum wage differences yield an observable disemployment effect, and commensurately, a substantial adverse unintended consequence.

Another possible explanation is that absolute differences matter more than percentage differences. In other words, even though eighteen percent appeared to be a large and significant change in New Jersey's minimum wage,¹¹² ultimately the monetary difference was only eighty cents an hour, which was too insufficient to have a clear impact on either side of the state border. The increase in Washington's minimum wage in absolute terms from 1998 to present is historically unusual, and allowed for an examination of the largest minimum wage difference between contiguous states in the country, thus permitting the comparison of a much larger difference than was possible for prior researchers to exploit. The results of this study of adjacent counties suggests that while the marginal effects of typical minimum wage rate increases tend to be small, unusually large and consistent increases do have the disemployment effect that competitive industry models in the research predict.¹¹³

V. Conclusion

In his 1936 campaign speech President Roosevelt promised “[o]f course we will continue to seek to improve working conditions for the workers of America—to reduce hours over-long, to increase wages that spell starvation, to end the labor of children, to wipe out sweatshops... For all these we have only just begun to fight.”¹¹⁴ Two years later, Congress passed the Fair Labor Standards Act, and its minimum wage provision.¹¹⁵ The provisions of the Act, while transformational for the American worker, did not eradicate poverty; that fight continues. Decades later Dr. Martin Luther King proclaimed, that “[t]here is nothing except shortsightedness to prevent us from guaranteeing an annual minimum—and livable—income for every American family.”¹¹⁶ This goal, and the propriety of governmental policies designed to assist low income workers in providing a sufficient standard of living for their families, is not nearly as controversial as the means by which that goal should be achieved.

The debate over those means is an impassioned one. Proponents of a governmentally mandated minimum wage for hourly workers cite studies and justifications for their positions.¹¹⁷ Opponents of this approach advocate other policies, such as the earned income tax credit as a better targeted alternative to mandatory minimum wage rates, and counter the alleged positive attributes of minimum wage legislation.¹¹⁸ While the effect of minimum wage legislation on unfair competition remains largely anecdotal, its effect on employment has been the subject of both criticism and empirical analysis. The study reported in this paper validates that criticism, at least with respect to situations where increases in the minimum wage rate are large enough to be binding. This study's findings suggest that alternative anti-poverty policies merit greater consideration, and that the effectiveness of recent minimum wage rate increases in achieving social objectives should be examined.

Table 1: Statewide Minimum Wages and Unemployment Rates

Year	Washington Min Wage (\$)	Washington Unemployment (%)	Idaho Min Wage (\$)	Idaho Unemployment (%)
1997	5.15	4.9	5.15	5.1
1998	5.15	4.8	5.15	5.1
1999	5.70	4.8	5.15	4.9
2000	6.50	5	5.15	4.6
2001	6.72	6.2	5.15	4.9
2002	6.90	7.3	5.15	5.4
2003	7.01	7.4	5.15	5.2
2004	7.16	6.2	5.15	4.6
2005	7.35	5.5	5.15	3.7
2006	7.63	4.9	5.15	3.0
2007	7.93	4.5	5.85	3.0
2008	8.07	5.3	6.55	4.9
2009	8.55	8.2	7.25	8.0

Table 2: Labor Force and Unemployment in Counties Along the Washington-Idaho State Border

Year	Washington border labor force	Idaho border labor force	Washington border unemployed	Idaho border unemployed	WA border unemployment rate	Idaho border unemployment rate
1997	243,993	117,571	10,075	7811	4.1	6.6
1998	250,593	120,200	10,146	8137	4.0	6.8
1999	256,429	120,392	11,858	8022	4.6	6.7
2000	245,216	118,543	12,475	7291	5.1	6.2
2001	244,093	122,054	15,626	7946	6.4	6.5
2002	248,999	122,795	18,476	8221	7.4	6.7
2003	252,816	123,497	18,631	7764	7.4	6.3
2004	253,972	126,937	16,304	6640	6.4	5.2
2005	259,041	131,172	14,535	5673	5.6	4.3
2006	261,559	132,485	12,829	4656	4.9	3.5
2007	268,203	134,259	12,609	4559	4.7	3.4
2008	276,168	137,062	15,397	7558	5.6	5.5
2009	277,300	136,508	23,941	11,895	8.6	8.7

Figure 1: Statewide Minimum Wages and Unemployment Rates

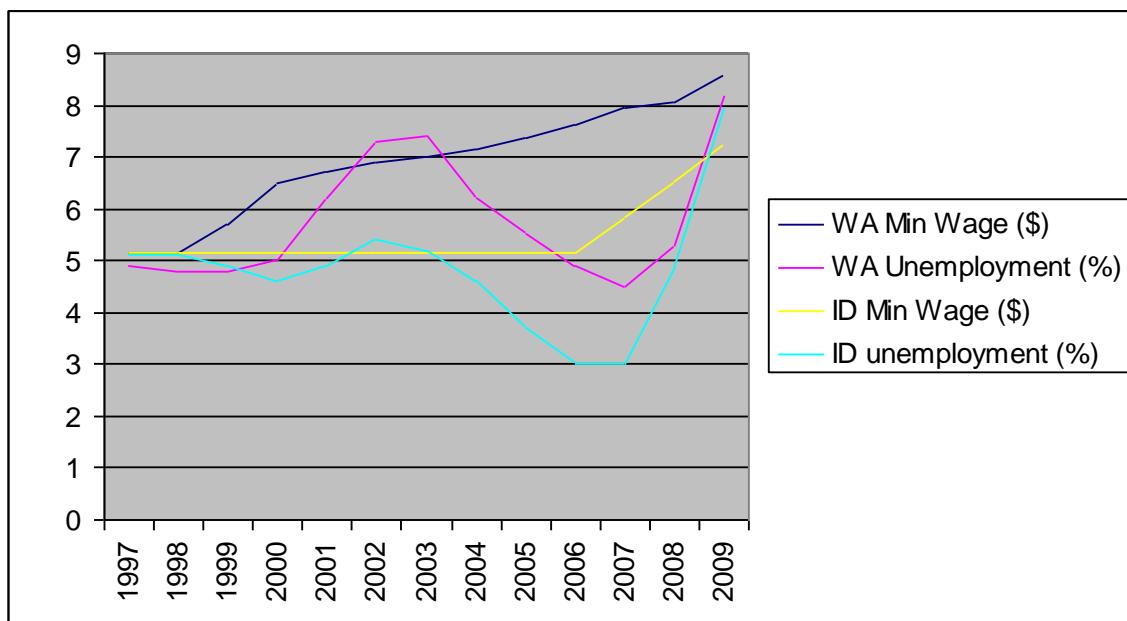
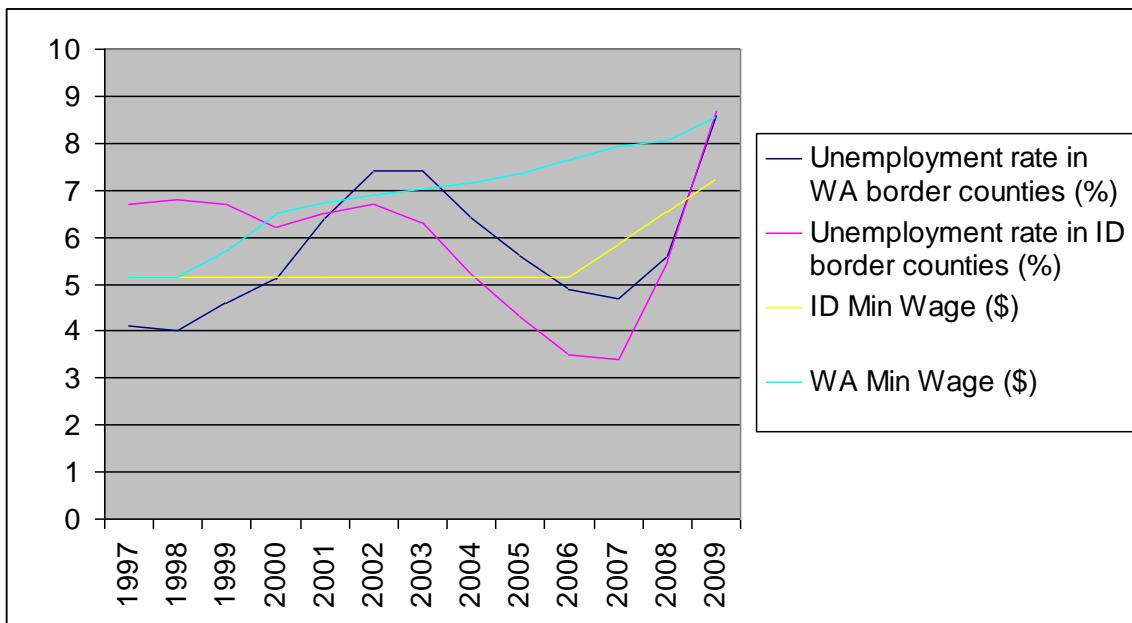


Figure 2: Minimum Wage and Unemployment in Counties Along the Washington-Idaho State Border



Footnotes

¹ Pub. L. No. 75-718, 52 Stat. 1060 (1938) (codified as amended at 29 U.S.C.S. §§ 201-219 (2010)).

² The FLSA also enacted a forty-hour workweek, overtime pay at the rate of time and a half for every hour over forty hours worked in one week, and prohibited child labor. *Id.*

³ 29 U.S.C.S. §§ 202(a) (2010).

⁴ See, e.g., JEROLD L. WALTMAN, THE POLITICS OF THE MINIMUM WAGE (2000) (arguing that the politics of the minimum wage are largely symbolic but produce a tangible impact on the lives of constituents); OREN M. LEVIN-WALDMAN, THE CASE OF THE MINIMUM WAGE: COMPETING POLICY MODELS 21-48 (2001) (discussing economic and political frames of reference for examining minimum wage policies).

⁵ For a discussion of the historical context surrounding the passage of the FLSA see Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, MONTHLY LAB. REV., June 1978, at 22-30.

⁶ For an overview of the debate among economists, politicians and public opinion see LARRY M. BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 223-251 (2008).

⁷ For example, there was a purported increase in unemployment among African Americans in the South subsequent to the establishment of this federally mandated minimum wage. David E. Bernstein, *Roots of the 'Underclass': The Decline of Laissez-Faire Jurisprudence and the Rise of Racist Labor Legislation*, 43 AM. U. L. REV. 85, 129-31 (1993). See also Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335 (1987) (arguing that the farm worker exclusion from the FLSA was intended to discriminate against minority agricultural employees). Today, scholars still question whether or not people of color are adversely affected by minimum wage laws. See Harry Hutchison, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes: Exploding the Power of Myth, Fantasy, and Hierarchy*, 34 HARV. J. ON LEGIS. 93 (1997) (proposing that minimum wage laws are exclusionary institutions that are not necessarily in the interest of African Americans, who constitute a disproportionate share of the unemployed).

⁸ For a historical overview of early state and federal minimum wage laws and their legal challenges see William P. Quigley, "A Fair Day's Pay for a Fair Day's Work": Time to Raise and Index the Minimum Wage, 27 ST. MARY'S L.J. 513, 514-30 (1996); Pamela N. Williams, *Historical Overview of the Fair Labor Standards Act*, 10 FL. COASTAL L. REV. 657, 657-77 (2009). See also Seth D. Harris, *Conceptions of Fairness and the Fair Labor Standards Act*, 18 HOFSTRA LAB. & EMP. L.J. 19 (2000) (discussing in the historical development of minimum wage legislation as part of a conceptual debate over fairness in wages).

⁹ N. SCOTT ARNOLD, IMPOSING VALUES: AN ESSAY ON LIBERALISM AND REGULATION 202 (2009). For an explanation of how that concept should be defined in this time period see JOHN A. RYAN, SOCIAL RECONSTRUCTION 65-80 (1920). Interestingly, a current grass roots movement which remains committed to raising the standard of living for the working poor is known as the living wage movement. *See infra* notes 66-69, and accompanying text.

¹⁰ Fed. Energy Reg. Comm. v. Mississippi, 456 U.S. 742, 789 (1982).

¹¹ West Coast Hotel Co. v. Parrish, 300 U.S. 379, 390-91 (1937)

¹² Andrew Seltzer, *Causes and Consequences of American Minimum Wage Legislation: 1911-194*, 55 J. ECON. HIST. 376-378 (1995).

¹³ *Minimum Wage Bill for Federal Employees: Hearings on H.R. 152 to fix compensation of certain employees of United States Before the House Comm. on Labor*, 65th Cong., 2d Sess. (1918); *Minimum Wage Bill for Federal Employees: Hearings on H.R. 1235 Before the House Comm. on Labor*, 66th Cong., 1st Sess. (1919); *Minimum wage bill: Hearing on S. 2581, a bill to fix the compensation of certain employees of the United States Before the Senate Comm. on Education and Labor*, 66 Cong., 1st Sess. (1919).

¹⁴ See VIVIEN HART, BOUND BY OUR CONSTITUTION: WOMEN, WORKERS, AND THE MINIMUM WAGE (1994) (discussing the intersection of constitutional policies and minimum wage laws).

¹⁵ Hammer v. Dagenhart, 247 U.S. 251(1918).

¹⁶ 261 U.S. 525 (1923).

¹⁷ 298 U.S. 587 (1936). *See also* Lochner v. New York, 198 U.S. 45 (1905) (striking down a New York law which prohibited employers from allowing employees to work more than ten hours in one day).

¹⁸ West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937) (overruling Adkins v. Children's Hospital).

¹⁹ Pub. L. No. 75-718, 52 Stat. 1060 (1938) (codified as amended at 29 U.S.C.S. §§ 201-219 (2010)).

²⁰ *See generally* ARTHUR SCHLESINGER, THE AGE OF ROOSEVELT: THE COMING OF THE NEW DEAL (1958) (discussing Roosevelt's New Deal reforms). Although the Democratic Administration supported the FLSA, southern Democrats as a group opposed the reform measure. For a discussion of this division in the party see Robert K. Fleck *Democratic Opposition to the Fair Labor Standards Act of 1938*, 62 J. ECON. HIST. 25 (2002).

²¹ In early 1932 almost one-fourth of the entire population had no income whatsoever. PIERS BRENDON, THE DARK VALLEY: A PANORAMA OF THE 1930S 86 (2000). The period witnessed American citizens "fighting for scraps of food like animals!" LOUISE ARMSTRONG, WE TOO ARE THE PEOPLE 10 (1938).

²² Shawn D. Vance, *Trying to Give Private Sector Employees a Break: Congress's Efforts to Amend the Fair Labor Standards Act*, 19 Hofstra Lab. & Emp. L.J. 311, 312-16 (2002) (reviewing the background of the legislation).

²³ For example, the National Recovery Administration Act was struck down by the Court. SCHLESINGER, *supra* note 20, at 298.

²⁴ N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 36-41 (1937).

²⁵ 312 U.S. 100 (1941).

²⁶ *Id.* at 123-24. The Court discounted dicta from a previous decision on federal child labor laws as being at odds with the recognition of the plenary power of the Commerce Clause. *Id.* at 115-16. Previously, the Court in *Hammer v. Dagenhart* recognized that some states had minimum wage laws and others did not, and that businesses operating in states with wage regulation could be at an economic disadvantage in comparison to those in states without such regulation. Yet the Court opined that "surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress." *Hammer v. Dagenhart*, 247 U.S. 251, 273 (1918).

²⁷ *Darcy*, 312 U.S. at 122.

²⁸ 29 U.S.C.S. § 202 (2010).

²⁹ *Id.* § 206. Violations of the Act are punishable by fines and imprisonment in addition to civil damages for unpaid wages and attorneys' fees. *Id.* § 216.

³⁰ *Id.* §§ 211, 213(a), 203(d) & (e).

³¹ *Id.* § 29 U.S.C.S. § 213(a)(1) (2010). Arguably, these employees are likely to earn more than the minimum wage anyway, in part because of what scholars describe as a *fairness dynamic*, which postulates that, with or without regulatory incentive, employers tend to pay workers who are difficult to monitor (such as those in executive, administrative and professional positions) more money than those workers who are easier to monitor in order to encourage high levels of effort. Christine Jolls, *Fairness, Minimum Wage Law and Employee Benefits*, 77 N.Y.U.L. REV. 47, 57-61 (2002).

³² The regulations were revised under the Bush administration, and the threshold for the minimum salary required for the exemption was increased from \$155 per week (\$8,060 per year) to \$455 per week (\$23,660 per year). William J. Kilberg, Jason Schwartz & Joshua Chadwick, *The George W. Bush Administration: A Retrospective: A Measured Approach: Employment and Labor Law During the George W. Bush Years*, 32 HARV. J.L. & PUB. POL'Y 997, 1002 (2009) (citing 29 C.F.R. § 541.601 (2004)).

³³ See, e.g., Laura C. Edmonds, Note, *The Fair Labor Standards Act-Anti-Poverty Legislation in the Modern Era: Advocating Judicial Scrutiny Under a Feminist Policy-Centered Analysis*, 19 W. NEW ENG. L. REV. 229 (1997) (examining the rationale

and effect of including a pre-school within the definition of enterprise in interpreting the definitions of the FLSA); Adam P. Greenberg, Note, *Reality's Kids: Are Children Who Participate on Reality Television Shows Covered Under the Fair Labor Standards Act?*, 82 S. CAL. L. REV. 595 (2009) (examining the application of the FLSA provision that exempts children employed as actors or performers to child participants in reality television shows); Matthew J. Lang, Comment, *The Search for a Workable Standard for When Fair Labor Standards Act Coverage Should Be Extended to Prisoner Workers*, 5 U. PA. J. LAB. & EMP. L. 191(2002) (examining the applicability of the FLSA to prisoner-workers); Sarah L. Santos, Note, *The Fair Labor Standards Act-Where the Fourth Circuit went wrong in Shaliehsabou v. Hebrew Home of Greater Washington: Judicial Expansion of Fair Labor Standards Act Exemptions to Include Ministerial Employees*, 28 W. NEW ENG. L. REV. 369 (2006) (examining whether or not the FLSA provides a ministerial exemption).

³⁴ 29 U.S.C.S § 204 (2010).

³⁵ Edmonds, *supra* note 33, at 230; Donald J. Spero, *Coverage of the Fair Labor Standards Act: What Connection with Commerce Brings and Employee within the Coverage of the Fair Labor Standards Act?*, Part 2, FLA. BAR J., June 2007, at 77 (discussing the expansion of FLSA by the 1961 and 1974 amendments concerning enterprise coverage, as well as subsequent judicial interpretation of “enterprise”).

³⁶ The prevailing federal minimum wage was \$2.90 in 1979, \$3.10 in 1980, and \$3.35 in 1981-89. The minimum wage rose to \$3.80 on April 1, 1990, to \$4.25 on April 1, 1991, to \$4.75 on October 1, 1996, to \$5.15 on September 1, 1997, to \$5.85 on October 1, 1996, to \$5.15 on September 1, 1997, to \$5.85 on July 24, 2007, and to \$6.55 on July 24, 2008. *Characteristics of Minimum Wage Workers: 2008*, Bureau of Labor Statistics, U.S. Dept. of Labor, March 11, 2009, n.2, available at <http://www.bls.gov/cps/minwage2008.pdf> [hereinafter *Characteristics of Minimum Wage Workers: 2008*].

³⁷ RONALD J. KRUMM, THE IMPACT OF MINIMUM WAGE ON REGIONAL LABOR MARKETS 7-12 (1981).

³⁸ *Id.* at 11. The application of national minimum wage laws to municipal employees initially was viewed as an unconstitutional invasion by Congress of state autonomy. *National League of Cities v Usery*, 426 U.S. 833 (1976). That decision was overruled in *Garcia v San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

³⁹ Melanie Ryan, Note, *Swept Under the Carpet: Lack of Legal Protections for Household Workers--A Call for Justice*, 20 WOMEN'S RIGHTS L. REP. 159, 166-67 (1999). Live-in household workers are exempt from the FLSA's overtime provisions, however. *Id.*

⁴⁰ 29 U.S.C.S § 206(g) (2010).

⁴¹ Pub. L. No. 110-28, 121Stat 189 (2007) (codified at 29 U.S.C.S § 206 (2010)).

⁴² BARTELS, *supra* note 6, at 224-27 (2008). The initial rate of twenty-five cents translates to about \$3.60 in 2006 dollars. *Id.* at 224.

⁴³ *Characteristics of Minimum Wage Workers: 2008*, *supra* note 36.

⁴⁴ 29 U.S.C.S § 218(a) (2010).

⁴⁵ For an overview of state minimum wage laws see *Minimum Wage Laws in the States - January 1, 2010*, U.S. Dept. of Labor Wage & Hour Division, available at <http://www.dol.gov/whd/minwage/america.htm>.

⁴⁶ ALASKA STAT. § 23.10.065(a) (2010); CAL. LAB. CODE § 1182.12 (West 2010); CONN. GEN. STAT. § 31-58(j) (2010); D.C. CODE ANN. § 32-1003(2010);§ 820 ILL. COMP. STAT. 105/4(a)(1) (2010);ME. REV. STAT. ANN. tit. 26, § 664(1) (West 2009); MASS. GEN. LAWS ch. 151 § 1 (2010); MICH. COMP. LAWS. § 408.384(4)(1)(d) (2010); N.M. STAT. ANN. § 50-4-22(A) (2010);R.I. GEN. LAWS § 28-12-3(a)(d) (2010).

⁴⁷ DEL. CODE ANN. tit. 19, § 902(a) (2010);HAW. REV. STAT. § 387-2(3) (2009);IOWA CODE § 91D.1(a) & (b) (2010); KAN. STAT. ANN. § 44-1203(a)(2) (2009); KY. REV. STAT. ANN. § 337.275(1) (Banks-Baldwin 2009); MONT. CODE ANN. § 39-3-409(1)(a) & (b) (2010); NEB. REV. STAT. § 48-1203(1)(d) (2009); NEV. REV. STAT. § 608.250(1) (2009);N.H. REV. STAT. ANN. § 279:21 (2010); N.C. GEN. STAT. § 95-25.3(a) (2009);N.D. CENT. CODE § 34-06-22(1)(c) (2009);S.D. CODIFIED LAWS §60-11-3 (Michie 2009); UTAH ADMIN. CODE §R610-1-3(A) (2010); W. VA. CODE § 21-5C-2(3) (2010); WIS. ADMIN. CODE §272.03(a) (2010).

⁴⁸ See *infra* notes 61-63, and accompanying text.

⁴⁹ ARIZ. REV. STAT. § 23-363(A)&(B) (2010);COLO. REV. STAT. ANN. CONST. ART. 18, §15 (2008); FLA. STAT. ch. §448.110(4)(a) (2010); OH. CONST. ART. II, § 34a (2010); MO. REV. ST. § 290.502(2) (2010);OR. REV. STAT. § 653.025(1)(e) & (2) (2009); VT. STAT. ANN. tit. 21 § 384(a) (2010); WASH. REV. CODE § 49.46.020 (4)(b) (2010).

⁵⁰ See *Minimum Wage Laws in the States - January 1, 2010*, U.S. Dept. of Labor Wage & Hour Division, available at <http://www.dol.gov/whd/minwage/america.htm> (listing the minimum wage rates for states, and identifying those states with no legislation).

⁵¹ S.C. CODE ANN. § 6-1-130(B) (Law. Co-op. 2009); LA. REV. STAT. ANN. § 23:642(B) (West 2009).

⁵² For an overview of the economic debate see Matthew Stoloff, Comment, *Minimal Change?: Implications of the "Raise the Minimum Wage for Working Arizonans Act,"* 39 ARIZ. ST. L.J. 1287, 1295-1302 (2007).

⁵³ Ironically, it is unlikely that the various welfare programs, obviously aimed at persons of limited means, fall under the provisions of the FLSA. See, e.g., Benjamin F. Burry, *Civil Rights and the Low-Wage Worker: Comment: Testing Economic Reality: FLSA and Title VII Protection for Welfare Participants*, 2009 U. CHI. LEGAL F. 561 (evaluating judicial interpretations concerning whether or not state welfare participants were employees under the FLSA); Nan S. Ellis, *Work Is*

Its Own Reward: Are Welfare Participants Employees Entitled to Protections under the Fair Labor Standards Act?, 13 CORNELL J. L. & PUB. POL'Y 1(2003) (concluding that public policy objectives can best be achieved by affording welfare participants a minimum wage); Kevin J. Miller, Comment, *Welfare and the Minimum Wage: Are Welfare Participants "Employees" Under the Fair Labor Standards Act?*, 66 U. CHI. L. REV. 183 (1999) (arguing that requiring the statutory minimum wage to be paid will provide welfare recipients with greater incentives to participate in welfare programs and a better chance of breaking the cycle of dependency).

⁵⁴ DAVID CARD & ALAN B. KRUEGER, *MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE* (1997) (examining the effect of the minimum wage on employment and wage distribution and concluding the effects were not profound); Richard B. Freeman, *Minimum Wages—Again!*, INT'L J. MANPOWER, 15(2), 8-25, 1994 (asserting that at certain levels moderate increases do reduce employment and may be associated with higher employment in some locales).

⁵⁵ Scott D. Miller, *Atrophied Rights: Maximum Hours Labor Standards under the FLSA and Illinois Law*, 28 N. ILL. U. L. REV. 261, 274-77 (2008) (citing relevant empirical studies).

⁵⁶ Richard A. Ippolito, *The Impact of the Minimum Wage If Workers Can Adjust Effort*, 46 J. LAW & ECON. 207 (2003) (observing, as well, that the full equilibrium impact of the minimum wage on employment is small, producing negligible effects on workers, employers, and overall welfare).

⁵⁷ RAVI BATRA, *GREENSPAN'S FRAUD: HOW TWO DECADES OF HIS POLICIES HAVE UNDERMINED THE GLOBAL ECONOMY* 185-89 (2005).

⁵⁸ *Id.* at 187.

⁵⁹ *Id.*

⁶⁰ *Would an Increase in the Federal Minimum Wage Help or Hinder Small Business?*, Hearing Before the Subcomm. on Workforce, Empowerment & Government Programs of the House Comm. on Small Business, 108 Cong., 2d Sess. 51-2 (Apr. 29, 2004) (testimony of Jared Bernstein, senior economist, Economic Policy Institute).

⁶¹ Quigley, *supra* note 8, at 459-56. See also Erica Munoz, *Raising the California Minimum Wage is Not Enough: Creating a Sustainable Wage By Accounting for Inflation Through Indexing*, Note, 16 S. CAL. INTERDIS. L.J. 423, 444-50 (2007) (arguing for raising and indexing California's state minimum wage).

⁶² For a discussion of the proposed linkage see William G. Whittaker, *Possible Indexation of the Federal Minimum Wage: Evolution of Legislative Activity*, CRS Report for Congress, Jan. 10, 2007.

⁶³ *Id.* at 49-50. On the other hand, arguments against center on whether or not the indexation itself could be an engine driving inflation and how periodic increase would work within existing merit systems. *Id.* at 50.

⁶⁴ Sharon M. Dietrich, *When Working Isn't Enough: Low-Wage Workers Struggle to Survive*, 6 U. PA. J. LAB. & EMP. L. 613, 619-20 (2004).

⁶⁵ *Id.* at 620-22.

⁶⁶ Scott L. Cummings & Steven A. Boucher, *Civil Rights and the Low-Wage Worker: Article: Mobilizing Local Government Law for Low-Wage Workers*, 2009 U. CHI. LEGAL F. 187, 192-196 (2009). The newest form of a local living wage law is the *Big Box Living Wage ordinance* designed to regulate a specific type of industry, limited to big box retail stores like Wal-Mart or Target. Stephanie Wagner, Note, *Big Box Living Wage Ordinances: Upholding Our Constitutive Commitment to a Remunerative Job*, 15 GEO. J. POVERTY LAW & POL'Y 359, 369-73 (2008). For an overview of the living wage movement see William Quigley, *Full-Time Workers Should Not Be Poor: The Living Wage Movement*, 70 MISS. L.J. 889 (2001) (describing and advocating the local, grass roots living wage movement). See also William P. Quigley, *The Right to Work and Earn a Living Wage: A Proposed Constitutional Amendment*, 2 N.Y. CITY L. REV. 139 (1998) (proposing a constitutional amendment to guarantee the right to an opportunity for employment at a living wage).

⁶⁷ Williams, *supra* note 8, at 686-90.

⁶⁸ Wagner, *supra* note 66, at 373. There may be a correlation between political participation, minimum wage rates, and income tax rates: “For example, in the fall of 2002, only 39% of the eligible Americans...vote[d] in the federal elections, thus producing a truly conservative Congress that reduced the top tax rate even more for the wealthy Americans (of whom more than 80% voted). However, that same fall 83% of the eligible Germans went out to vote, and so the legislature they elected has been raising their minimum wage to the world’s highest, rather than reducing their CEO tax rates.” Paul Weiler, *Comparative Labor and Employment Law and Policy in the Next Quarter Century: Enhancing Worker Lives Through Fairer Labor and Worklife Law in Comparative Perspective*, 25 COMP. LAB. L. & POL'Y J. 143, 164 (2003).

⁶⁹ Cummings & Boucher, *supra* note 66, at 195-6. See also Rachel Harvey, Note, *Challenges to the Living Wage Movement: Obstacles in a Path to Economic Justice*, 14 U. FLA. J.L. & PUB. POL'Y 229, 248-51(2003) (discussing economic studies about the impact of living wage ordinances and employment rates).

⁷⁰ KRUMM, *supra* note 37, at 5 (suggesting that minimum wage legislation impairs the employment and compensation opportunities of low skill workers and exacerbates conditions that are detrimental to maintaining a minimum standard of living).

⁷¹ ARNOLD, *supra* note 9, at 203.

⁷² See Melissa Felder, Note, *Not Quite "Family Friendly": Amending the Fair Labor Standards Act to Provide Comp Time May Hurt Welfare Leavers and Their Families*, 12 GEO. J. POVERTY LAW & POL'Y 273, 277-82 (2005) (arguing that the

overtime provisions of the Act must give way to provisions for comp time because of the influx of women, dual wage earners, and single-parent wage earners into the work force).

⁷³ DAVID NEUMARK & WILLIAM L. WASCHER, MINIMUM WAGES 286 (2008). Similarly, a study of the minimum wage in Latin America concluded, *inter alia*, that it 1) is not a powerful tool to decrease household poverty or inequality, 2) has a negative effect on employment, and 3) at high levels does not necessarily benefit the poorest. WENDY CUNNINGHAM, MINIMUM WAGES AND SOCIAL POLICY: LESSONS FROM DEVELOPING COUNTRIES 71-75 (2007).

⁷⁴ See Daniel Shaviro, *The Minimum Wage, The Earned Income Tax Credit, and Optimal Subsidy Policy*, 64 U. CHI. L. REV. 405 (1997) (proposing programs as the Earned Income Tax Credit, Aid to Families with Dependent Children, and potential alternatives such as a negative income tax as economically sound substitutes for the minimum wage as tools to combat poverty); Cass R. Sunstein, *A New Progressivism*, 17 STAN. L. & POL'Y REV 197 (2006) (questioning the efficacy of governmental regulations such as the minimum wage as a mechanism for redistributing resources). See also JOHN P. FROMBBY, JOHN A. BISHOP & HOSEONG KIM, MINIMUM WAGES AND POVERTY: AN EVALUATION OF POLICY ALTERNATIVES 162-63(2005) (concluding that, while the minimum wage does not harm the poor, and may in some income ranges reduce poverty, the Earned Income Tax Credit is a better policy for improving the well-being of families at the bottom of the income distribution); Peter B. Edelman, *Changing the Subject: From Welfare to Poverty to a Living Income*, 4 NW. J. L. & SOC. POL'Y 14, 22-3 (2009) (suggesting that the minimum wage and the EITC must operate in tandem and in tension with one another, that is, the minimum wage should be as high as it can be without destroying jobs, while the EITC should add to workers' income without becoming a subsidy for low-wage employers); David Neumark & William Wascher, *Minimum Wages and Low-Wage Workers: How Well Does Reality Match the Rhetoric?*, 92 MINN. L. REV. 1296 (2008) (concluding that the minimum wage, while not causing significant unemployment at the macro-economic level, has been ineffective in achieving the desired economic and social benefits, and that other labor market programs are more effective in aiding poor families).

⁷⁵ Daryl Marc. Shapiro, Comment, *Will an Increased Minimum Wage Help the Homeless?* 45 U. MIAMI L. REV. 651, 660-677(1991) (arguing that tax programs and wage subsidies offer better solutions with minimal adverse effects on employment and greater efficiency).

⁷⁶ Shaviro, *supra* note 74, at 435. See also Donald R. Deere, Kevin M. Murphy & Finis R. Welch, *Examining the Evidence on Minimum Wages and Employment*, in THE EFFECTS OF THE MINIMUM WAGE ON EMPLOYMENT 52 (Marvin H. Kosters, ed. 1996) (questioning the efficacy of redistributive effects since many low-wage workers are not from low-wage families); SAUL D. HOFFMAN & LAURENCE S. SEIDMAN, HELPING WORKING FAMILIES: THE EARNED INCOME TAX CREDIT 108-12 (2003) (comparing the EITC with the minimum wage for their targeting efficacy and labor market impacts).

⁷⁷ SAUL HOFFMAN & LAURENCE SEIDMAN, HELPING WORKING FAMILIES: THE EARNED INCOME TAX CREDIT 202 (2002). See also Timothy J. Eifler, Comment, *The Earned Income Tax Credit as a Tax Expenditure: An Alternative to Traditional Welfare Reform*, 28 U. RICH. L. REV. 701, 738-45 (1994) (arguing that the EITC is more efficient than the minimum wage in targeting those workers who need assistance with fewer adverse side-effects, such as unemployment). But see Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533 (1995) (recognizing that the EITC is not a panacea, and as a tax-based income-transfer program, faces inherent institutional constraints not present in traditional welfare programs). For a comprehensive discussion of the Earned Income Tax Credit, its history, and suggestions for improving its efficiency in assisting low income earners see Jonathan Barry Forman, *Improving the Earned Income Credit: Transition to a Wage Subsidy Credit for the Working Poor*, 16 FLA. ST. U. L. REV. 41 (1988); Jennifer Bird-Pollan, *Who's Afraid of Redistribution? An Analysis of the Earned Income Tax Credit*, 74 MO. L. REV. 251(2009).

⁷⁸ *Minimum Wage: Hearings Before the House Comm. on Education and the Workforce*, 106th Cong. 1st Sess. 235-279 (1999) (working paper of David Neumark and William Washler). For example, if a preschool is interpreted as a covered entity under the FLSA, and workers are paid the minimum wage, then costs for day care will likely increase, which without adequate subsidies, disproportionately impacts the ability of low-income individuals to participate in the economy. A failure to include pre-school within the statute's coverage also results in an adverse impact on low-income female workers because women comprise the majority of the workforce in the pre-kindergarten childcare industry. Edmonds, *supra* note 33, at 231.

⁷⁹ *Minimum Wage: Hearings Before the House Comm. on Education and the Workforce*, 106th Cong. 1st Sess. 345- 355 (1999) (testimony of Joanne Spetz, Research Fellow, Policy Institute of California). In contrast, other studies claim that the minimum wage rate significantly raises the income level of those parents who left welfare for work. *Minimum Wage: Hearings Before the House Comm. on Education and the Workforce*, 106th Cong. 1st Sess. 391-406 (1999) (testimony of Ed Lazere, Senior Policy Analyst, Center on Budget and Policy Priorities on the effect of Oregon minimum wage increases).

⁸⁰ *Evidence Against a Higher Minimum Wage: Hearing Before the Joint Economic Comm. of Congress*, 104th Cong. 1st Sess. 108-138 (1995) (offering a gender analysis of labor market policies).

⁸¹ See David Neumark & William Wascher, *Minimum Wages, Labor Market Institutions, and Youth Employment: A Cross-National Analysis*, 57 INDUST. & LAB. REL. REV. 223 (2004) (providing evidence that the minimum wage reduces employment rates among the youth population in countries with regulated labor markets, like the United States). But see Jeffrey P. Thompson, *Using Local Labor Market Data to Re-Examine the Employment Effects of the Minimum Wage*, 62 IND.

& LAB. REL. REV. 343(2009) (concluding that the employment of young adults (ages 19-22) is not measurably affected by federal minimum wage increases).

⁸² Donald R. Deere, Kevin M. Murphy & Finis R. Welch, *supra* note 76, at 49.

⁸³ Maria O'Brien Hylton, "Parental" Leaves and Poor Women: Paying the Price for Time Off, 52 U. Pitt. L. REV. 475, 485-91(1991) (applying a minimum wage economic analysis to parental leave acts).

⁸⁴ Marvin H. Kosters, *Employment and the Minimum Wage: What Does the Research Show?*, in THE EFFECTS OF THE MINIMUM WAGE ON EMPLOYMENT 106 (Marvin H. Kosters, ed. 1996).

⁸⁵ John Foley, Note, *Questioning the Merits of Federal Minimum Wage Legislation*, 5 GEO. J.L. & PUB. POL'Y 679, (2007) (citing economic studies of the unemployment and inflationary effects of minimum wage legislation).

⁸⁶ Catherine K. Ruckelshaus, *Labor's Wage War*, 35 FORDHAM URB. L.J. 373, 374-90 (2008) (discussing new community-based labor standards enforcement models to advance the protections of the FLSA).

⁸⁷ See *supra* notes 8-27, and accompanying text.

⁸⁸ CARD & KRUEGER, *supra* note 54, at ix-x (1997).

⁸⁹ *Id.* Also, the more recent increase in the number of living wage ordinances in cities may lead to a better understanding of the effect of such controls and spur sounder minimum wage decisions nationwide. Foley, *supra* note 85, at 689.

⁹⁰ Arguably, data collected from a localized statistical area is likely to provide closer comparison than cross-state studies.

Arindrajit Dube, T. William Lester & Michael Reich, *Minimum Wage Effects across State Borders: Estimates Using Contiguous Counties*, Institute for Research on Labor and Employment Working Paper Series, University of California at Berkeley (2007), available at <http://www.irle.berkeley.edu/workingpapers/157-07.pdf>.

⁹¹ See, e.g., Taeil Kim & Lowell J. Taylor. *The Employment Effect in Retail Trade of California's 1988 Minimum Wage Increase*, 13 J. BUS. & ECON. STAT. 175 (1995) (analyzing employment effects of California's minimum wage rate increase on workers in the retail industry); Peter F. Orazem & J. Peter Mattila, *Minimum Wage Effects on Hours, Employment, and the Number of Firms: The Iowa Case*, J. LAB. RES. 3(2002) (analyzing employment effects of a series of Iowa state minimum wage increases on relatively low-income workers from 1989-1992).

⁹² KRUMM, *supra* note 37, at 40-53. Moreover, the mobility of individuals between regions lessens the impact of state-specific regulation. *Id.*

⁹³ E.g., BELTON M. FLEISHER, *MINIMUM WAGE REGULATION IN RETAIL TRADE* 14-52 (1981) (examining the impact of federal minimum wage legislation on the cost of labor, employment and hours of work in retail trade);

⁹⁴ See, e.g., David Neumark & William Wascher, *Employment Effects of Minimum and Subminimum Wages: Panel Data on State Minimum Wage Laws*, 46 INDUST. & LAB. REL. REV. 55 (1992) (comparing states with lower minimum wage rates to states with higher minimum wage rates, and finding a net disemployment effect); Finis Welch, *Myth and Measurement: The New Economics of the Minimum Wage: Comment*, 48 INDUST. & LAB. REL. REV. 842 (1995) (reviewing DAVID CARD & ALAN B. KRUEGER, *MYTH AND MEASUREMENT: NEW ECONOMICS OF THE MINIMUM WAGE* (1995)).

⁹⁵ Dube, Lester & Reich, *supra* note 90.

⁹⁶ *Id.*

⁹⁷ Jeffrey P. Thompson, *Using Local Labor Market Data to Re-examine the Employment Effects of the Minimum Wage*, 62 IND. & LAB. REL. REV. 343 (2009) (evaluating how minimum wage rates affects teenage employment at the county level). See also Arindrajit Dube, T. William Lester & Michael Reich, *Do Minimum Wages Really Reduce Teen Employment? Accounting for Heterogeneity and Selectivity in State Panel Data*, Institute for Research on Labor and Employment Working Paper Series, University of California, Berkeley (2008), available at

<http://www.irle.berkeley.edu/workingpapers/166-08.pdf> (cautioning that heterogeneity in employment patterns and selectivity of states constitutes a significant concern for conventional minimum wage studies).

⁹⁸ The history of Washington's minimum wage changes over this period are available at *History of Washington Minimum Wage*, Washington State Department of Labor & Industries, available at

<http://www.lni.wa.gov/workplacerights/wages/minimum/history/default.asp>. Idaho's rate is the same as that of the federal government, and both rates remained unchanged during this period. Current state minimum wage rates are available from the Department of Labor. *Minimum Wage Laws in the States- January 1, 2010*, Wage and Hour Division, U.S. Dept. of Labor, available at <http://www.dol.gov/whd/minwage/america.htm>. Unemployment data is available through the Bureau of Labor Statistics. For current information see *Local Area Unemployment Statistics*, Bureau of Labor Statistics, U.S. Department of Labor (2010), available at <http://bls.gov/lau/data.htm>.

⁹⁹ See Dube, Lester & Reich, *supra* note 90, at 2-5(arguing that use of contiguous counties serves as the best available control for heterogeneity in labor markets).

¹⁰⁰ Local Area Unemployment Statistics, Bureau of Labor Statistics, U.S. Department of Labor (2010), available at <http://bls.gov/lau/data.htm>.

¹⁰¹ *Id.*

¹⁰² Unemployment rates are simply the result of dividing the number of unemployed over the total labor force and expressed as a percentage, just as is done with respect to statewide and national unemployment rates as reported by the Bureau of Labor Statistics.

¹⁰³ This result is consistent with the previously mentioned statewide trend. See Table 1 & Figure1.

¹⁰⁴ See Table 2 for comparisons.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Dube, Lester & Reich, *supra* note 90, at 3-4.

¹⁰⁸ David Card & Alan B. Krueger, *Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania*, 84 AM. ECON. REV. 772, 791(1994).

¹⁰⁹ See Table 1 for changes in the minimum wage rates of both states over time.

¹¹⁰ A commonly overlooked feature of the competitive model of minimum wages is that, as with other price controls, for minimum wage rates to have a disemployment effect, they must be high enough to be binding in the market. For an explanation of how price controls will not affect markets in these cases, see CAMPBELL MCCONNELL, STANLEY BRUE & SEAN FLYNN, ECONOMICS 59 (2009). For application of the term binding to minimum wage rates in this context see David Neumark & William Wascher, *State-Level Estimates of Minimum Wage Effects: New Evidence and Interpretations from Disequilibrium*, 37 J. HUMAN RESOURCES 35 (2002) (presenting an alternative method of estimating minimum wage effects using a disequilibrium approach that relaxes the assumptions that minimum wages are binding and labor markets are competitive).

¹¹¹ See, e.g., Kim & Taylor, *supra* note 91 (California); Card & Krueger, *supra* note 108 (New Jersey). See also Orazem & Mattila, *supra* note 91 (examining a limited number of increases in Iowa).

¹¹² Card & Krueger, *supra* note 108, at 791.

¹¹³ See Card & Krueger, *supra* note 108, at 790-791 (discussing the employment effects of the minimum wage rate in the fast food industry in contiguous states).

¹¹⁴ Franklin Delano Roosevelt, Speech at Madison Square Garden (October 31, 1936), available at <http://millercenter.org/scripps/archive/speeches/detail/3307>.

¹¹⁵ See *supra* notes 28-42, and accompanying text.

¹¹⁶ MARTIN LUTHER KING, JR. & JAMES MELVIN WASHINGTON, A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING 631 (1986).

¹¹⁷ See *supra* notes 54-69, and accompanying text.

¹¹⁸ See *supra* notes 70-87, and accompanying text.